

Message Text

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ACTION EA-09

INFO OCT-01 ISO-00 PM-04 NSC-05 SP-02 SS-15 CIAE-00 INR-07

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R 120644Z JUL 76

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 7281

INFO SECDEF WASHDC

JCS WASHDC

CINCPAC HONOLULU

CINCPACAF

CINCPACFLT

CINCPACREPPHIL SUBIC

CG 13TH AF CLARK

C O N F I D E N T I A L SECTION 1 OF 3 MANILA 10062

CINCPAC ALSO FOR POLAD

FROM USDEL 108

E.O. 11652: GDS

TAGS: MARR, RP

SUBJECT: PHILIPPINE BASE GEGOTIATIONS: LABLR

1. SUMMARY: EFFORTS TO RESOLVE WIDE DISPARITY BETWEEN PHIL DRAFT ARTICLE XI ON LABOR AND OUR TABLED PROPOSAL OF TEXT PROVIDED IN STATE 155032 OF JUNE 22 INDICATES A NEED TO CONSIDER A DIFFERENT APPROACH. CLEARANCE IS REQUESTED FOR NEW APPROACH IN WHICH WE WOULD SEEK TO RETAIN 1968 BLA EXCEPT AS MODIFIED BY THIS AGREEMENT. SPECIFIC CHANGES WOULD BE LIMITED TO THOSE ASPECTS OF GOP DRAFT ARTICLE XI WHICH WE CAN NEGOTIATE INTO FORMS ACCEPTABLE TO USG. BASIC GOP DEMAND FOR APPLICATION OF PHIL LABOR LAW WOULD BE ELIMINATED FROM LABOR LAW ARTICLE AND CONSIDERED WITHIN BROADER CONTEXT OF RESPECT FOR PHIL LAW (REF GOP DRAFT ARTICLE VII AND STATE 155015). END SUMMARY.

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2. WE APPRECIATE THE REAL DIFFICULTIES PRESENTED BY GOP HARD STAND DEMANDING REPLACEMENT OF 1968 BLA WITH TOTAL APPLICATION OF PHIL LABOR AND SOCIAL LAWS, RULES AND REGULATIONS IN U.S. FACILITIES. THIS DEMAND AND THE TACTICS OF UNDERSECRETARY INCIONG MADE LABOR PANEL DISCUSSIONS UNPRODUCTIVE. IN ORDER TO KEEP LABOR DISCUSSION GOING, CO-CHAIRMEN INSTRUCTED THEIR PEOPLE TO SIT DOWN TOGETHER AND ATTEMPT TO NARROW AND DEFINE THEIR DIFFERENCES. INFORMAL WORKING DRAFTS WERE USED TO ASSIST IN THIS PROCESS. DURING THE COURSE OF THESE EFFORTS, PHIL POSITION SOFTENED SOMEWHAT AND RESULTS LEAD USDEL TO CONCLUDE THERE IS VALUE TO BOTH PHIL AND U.S. SIDE IN AMENDMENT OF 1968 BLA.

3. THE FOLLOWING WORKING DRAFTS WERE DEVELOPED DURING THE EXPLORATORY SESSIONS 7 AND 8 JULY, UTILIZING GUIDELINES IN CINCPAC MESSAGE 230228"7,76. THE LANGUAGE IS NOT BINDING ON EITHER PARTY BUT WAS ONLY DEVELOPED TO PINPOINT THE PRECISE AREAS WHEREIN AMENDMENT TO THE BLA IS DESIRED BY THE GOP.

A. "PREFERENTIAL EMPLOYMENT". EXPLORATORY TEXT:
QUOTE: ALL CIVILIAN POSITIONS AT THE FACILITIES SHALL BE FILLED BY PHILIPPINE CITIZENS, EXCEPT THOSE THAT HAVE HISTORICALLY AND CONTINUOUSLY BEEN FILLED BY U.S. CIVILIAN EMPLOYEES. NEW POSITIONS MAY BE CREATED FOR U.S. CIVILIAN EMPLOYEES ONLY IN CASES WHERE THERE ARE SPECIAL MANAGEMENT NEEDS OR FOR SECURITY POSITIONS WHICH MAY BE FILLED ONLY BY CITIZENS OF THE U.S. THE PHILIPPINE BASE COMMANDER WILL BE GIVEN WRITTEN NOTICE PRIOR TO THE FILLING OF ANY SUCH NEWLY CREATED POSITION. IN THE EVENT THAT NO OBJECTION IS RECEIVED WITHIN FIVE WORKING DAYS, THE POSITION MAY BE FILLED. IN THE EVENT THAT THE PHILIPPINE BASE COMMANDER OBJECTS TO THE FILLING OF THE NEW POSITION WITH A U.S. CIVILIAN, CONSULTATIONS SHALL BE HELD BETWEEN THE PHILIPPINE BASE COMMANDER AND THE U.S. FACILITIES COMMANDER. IF THE QUESTION CANNOT BE RESOLVED, IT SHALL BE ELEVATED TO THE JOINT COMMITTEE FOR FINAL DETERMINATION. WHILE THE MATTER IS BEING ADJUDICATED, THE POSITION MAY BE FILLED TEMPORARILY BY A U.S. CITIZEN CIVILIAN EMPLOYEE. UNQUOTE.

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COMMENT: THE BASIC PREMISE OF PARAGRAPH 1 OF ARTICLE I, 1968 BLA IS CONTAINED IN THE DRAFTED TEXT, INCLUDING THE TERMINOLOGY "SPECIAL MANAGEMENT NEEDS" WHICH PHIL SIDE HAD PREVIOUSLY COMPLETELY REJECTED. COST OF THIS CONCESSION IS THAT WE SUBJECT OUR DECISIONS TO CREATE NEW U.S. CITIZEN POSITIONS TO REVIEW BY PHIL BASE COMMANDER AND THE UNION, AND DETERMINATION OF STRONGLY DISPUTED CASES BY JOINT COMMITTEE. IN ACTUAL PRACTICE UNDER CURRENT CBA, ARTICLE

VI, CONSULTATION WITH FEDERATION IS REQUIRED AND IN FACT CONDUCTED ON THESE SAME SITUATIONS; SAME CBA PROVISION ALSO REQUIRES U.S. FORCES TO REVIEW EVERY U.S. CIVILIAN POSITION WHENEVER IT IS VACATED WITH A VIEW TOWARD PLACING A FILIPINO IN IT. CBA ARTICLE XVIII, SECTION 3, COVERING "REDRESSAL PROCEDURES" PERMITS ELEVATION OF THESE SAME MATTERS TO THE JOINT COMMITTEE NOW. ALTHOUGH THE INTERPOSITION OF THE PHIL BASE COMMANDER MAY RAISE PROBLEMS, WE ANTICIPATE THAT IN ACTUAL PRACTICE IT WILL BE LARGELY CEREMONIAL--A MATTER OF PROVIDING HIM AND THE UNION WITH A WRITTEN LIST OF U.S. POSITIONS BEING FILLED, AS IS BEING PROVIDED NOW TO THE FEDERATION. IT DOES GIVE THE PHILS A SENSE OF PARTICIPATION IN WHAT THEY HAVE SEEN AS A UNILATERAL ACTION AGAINST WHICH THEY HAD NO RECOURSE AND NO HEARING OF THEIR SIDE BY SYMPATHETIC AUTHORITY. WE BELIEVE THAT THE PROPOSAL WILL NOT HAMPER EFFECTIVE U.S. BASE OPERATIONS. END COMMENT.

B. "REDUCTION-IN-FORCE". EXPLORATORY TEXT:

QUOTE: NO INVOLUNTARY SEPARATIONS BY REDUCTION IN FORCE AFFECTING FILIPINO EMPLOYEES SHALL BE MADE WITHOUT PRIOR CONSULTATION WITH THE PHILIPPINE BASE COMMANDER WHO, TOGETHER WITH THE UNITED STATES FACILITIES COMMANDER, SHALL REVIEW THE MATTER WITH A VIEW TO EXPLORING ALTERNATIVES AND MITIGATING THE ADVERSE EFFECTS THEREOF. NO REDUCTION IN FORCE SHALL BE EFFECTED UNLESS THE PERSONNEL CONCERNED HAVE BEEN NOTIFIED IN WRITING AT LEAST 30 DAYS PRIOR TO THE DATE OF THEIR PROJECTED SEPARATION. END QUOTE.

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FM AMEMBASSY MANILA

TO SECSTATE WASHDC 7282

INFO SECDEF WASHDC

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CINCPAC HONOLULU

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C O N F I D E N T I A L SECTION 2 OF 3 MANILA 10062

CINCPAC ALSO FOR POLAD

FROM USDEL 108

COMMENT: ALTHOUGH RIF DOES NOT APPEAR AS A SEPARATE ITEM IN THE CURRENT BLA, PARA 6 OF ARTICLE I ADDRESSES THE PHIL CONCERN, IMPLICIT IN THE EXPLORATORY TEXT, TO ASSURE THEIR PEOPLE A DEGREE OF SECURITY OF EMPLOYMENT. THE AGREED MINUTES TO BLA ARTICLE I, PARA 7, STATE THE U.S. INTEREST IN THESE WORDS: "THE UNITED STATES ARMED FORCES MAY SEPARATE AN EMPLOYEE AT SUCH TIMES AS THE CONTINUATION OF THIS EMPLOYMENT IS INCONSISTENT WITH MILITARY REQUIREMENTS...". AS WITH PERFERENTIAL TREATMENT, THE CBA ALREADY REQUIRES CONSULTATION WITH UNION OFFICIALS ON RIF OF 5 OR MORE. IN PRACTICE THE CONSULTATION RESULTS IN UNION AND MANAGEMENT DOING PRECISELY WHAT THE EXPLORATORY TEXT PUTS INTO WORDS: "...EXPLORING ALTERNATIVES AND MITIGATING THE ADVERSE EFFECTS THEREOF." THE REDUNDANT PRACTICE OF CONSULTING BOTH THE BASE COMMANDER AND THE UNION MAY YET HAVE TO BE ACCEPTED AS A MEANS OF GIVING THE BASE COMMANDER A ROLE IN THINGS. THE REQUIREMENT FOR 30 DAYS NOTICE WAS NOT
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AGREED UPON IN THE WORKING GROUP AS THE PHILS DEMAND WAS FOR 90 DAYS.

C. "SEVERENCE PAY". EXPLORATORY TEXT:
QUOTE: EXCEPT WHEN SEPARATION IS FOR CAUSE, SEVERENCE PAY BENEFITS SHALL BE GRANTED TO THOSE EMPLOYEES WHOSE EMPLOYMENT IS TERMINATED INVOLUNTARILY, INCLUDING TERMINATION BY REDUCTION IN FORCE CAUSED BY DISESTABLISHMENT OR DEACTIVATION OF A FUNCTION, ACTIVITY OR COMMAND. FOR PURPOSES OF COMPUTING SEVERENCE PAY, THE BASIS SHALL BE THE EMPLOYEE'S TOTAL FOR AGGREGATE SERVICE, LESS PERIODS OF SERVICE FOR WHICH HE HAS ALREADY BEEN PAID SEVERANCE PAY. END QUOTE.
COMMENT: THIS TEXT, WHICH APPEARS TO BE ACCEPTABLE TO PHIL SIDE AS WRITTEN IS VERBATIM LEFT OF PARA 7 OF ARTICLE I OF 1968 ?)-. END COMMENT.

D. "RECRUITMENT". EXPLORATORY TEXT:
QUOTE: VACANT POSITIONS WILL BE FILLED FIRST FROM WITHIN THE RANKS OF PRESENT FACILITY EMPLOYEES, FORMER EMPLOYEES, CHILDREN OF DECEASED EMPLOYEES OR OTHER SIMILAR SPECIAL CATEGORIES BEFORE ASSISTANCE IS SOUGHT FROM EMPLOYMENT

SERVICE OFFICES (ESO'S) OF THE PHILIPPINE DEPARTMENT OF LABOR. RECRUITMENT OF NEW FACILITY FILIPINO EMPLOYEES WILL BE ACCOMPLISHED FROM LISTS OF QUALIFIED APPLICANTS SUBMITTED BY THE ESO IN RESPONSE TO RECRUITMENT REQUESTS FROM THE FACILITIES. THE FACILITIES MAY REFER PERSONS TO THE ESO AND REQUEST THAT THEIR NAMES BE INCLUDED ON LISTS TO BE FURNISHED. SELECTION WILL BE MADE BY FACILITIES OFFICIALS AND ADDITIONAL LISTS MAY BE REQUESTED FOR THE SAME JOB VACANCY IN THE EVENT SUFFICIENT QUALIFIED PERSONS ARE NOT CONSIDERED TO BE LISTED SO THAT CHOICE IS AVAILABLE FROM SEVERAL BASICALLY QUALIFIED PERSONS. IN THE EVENT THE DEPARTMENT OF LABOR LEVIES A CHARGE FOR THESE SERVICES OF ITS ESO'S, THE U.S. FACILITIES MAY REQUEST A WAIVER OF SUCH FEES AND IN THE EVENT SUCH WAIVER IS NOT GRANTED, THE FACILITIES WILL BE AUTHORIZED TO RECRUIT DIRECTLY OR MAKE USE OF THE ESO AT THE FEE AGREED UPON. IN THE EVENT ESO DOES NOT FURNISH QUALIFIED CANDIDATES WITHIN A PERIOD OF ONE WEEK, U.S. FACILITIES MAY RECRUIT DIRECTLY. END QUOTE.

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COMMENT: THE 1968 BLA CONTAINS NO REFERENCE TO RECRUITING, BUT RECRUITING IS ADDRESSED IN CONSIDERABLE DETAIL IN ARTICLE VI OF THE CBA. PHIL SIDE--UNDERSECRETARY OF LABOR INCIONG SPECIFICALLY--HAS BEEN VERY INSISTENT THAT THE CANDIDATES, AND THAT WE OBLIGATE OURSELVES TO USE THAT SOURCE. WE BELIEVE IT MAY PROVE TO BE IN OUR INTEREST TO USE IT. WITH THE JUST-COMPLETED NATIONWIDE COMPUTER-BASED MANDATORY REGISTRATION OF UNEMPLOYED PERSONS, AN IMPROVED TESTING PROGRAM, PROTECTION OF OUR RIGHTS TO SET QUALIFICATION STANDARDS, TO INTERVIEW AND SELECT, AND TO DO OUR OWN RECRUITING IN THE EVENT OF UNSATISFACTORY ESO RESPONSE, WE LOOK FORWARD TO USING THE PROCEDURE. THE STICKY PROBLEM ON THIS DRAFT CONCERNS THE NEXT TO THE LAST SENTENCE IN THE TEXT ON THE MATTER OF FEES. PHIL SIDE STILL INSISTS ON CLOSING THE DOOR--THAT IS, MAKING PAYMENT OF THE SAME FEE PAID BY COMMERCIAL EMPLOYERS TO ESO MANDATORY ON U.S.; WE ARE INSISTING ON AN ESCAPE CLAUSE IN THE UNLIKELY EVENT THAT THE PHIL DEPARTMENT OF LABOR RAISED FEES TO A LEVEL WHERE IT WOULD BE MORE ECONOMICAL FOR US TO RESUME FULL RECRUITING OURSELVES. END COMMENT.

E. "PAYROLL DEDUCTIONS". EXPLORATORY TEXT:

QUOTE: THE U.S. FACILITIES COMMANDER SHALL EFFECT THE PAYROLL DEDUCTIONS REQUIRED BY PHILIPPINE LAWS, RULES AND REGULATIONS AS LISTED BELOW, AND SUCH OTHER DEDUCTIONS AS MAY BE AGREED UPON BY BOTH PARTIES. EXCEPT FOR UNION DUES AND AGENCY FEES WHICH WILL BE REMITTED DIRECTLY TO THE RECOGNIZED COLLECTIVE BARGAINING AGENT, SUCH DEDUCTIONS

WILL BE REMITTED TO THE PHILIPPINE BASE COMMANDER WHO,
IN TURN, WILL REMIT THEM TO THE APPROPRIATE PHILIPPING
GOVERNMENT AGENCY.

- (1) INCOME TAX.
- (2) SOCIAL SECURITY SYSTEM PREMIUMS.
- (3) EMPLOYEE COMPENSATION PREMIUMS.
- (4) MEDICARE PREMIUMS.
- (5) PAYMENT FOR HOUSING, SALARY, AND/OR EDUCATIONAL
LOANS
- (6) UNION DUES AND AGENCY FEES. END QUOTE.

COMMENT: THIS PARTICULAR ITEM WAS GENERATED BY THE PHIL
SIDE AND IS OF SPECIAL CONCERN TO THEM. THE ORIGINAL GOP
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TEXT WAS MODIFIED SOMEWHAT IN OUR DISCUSSIONS. ORIGINALLY,
IT DID NOT SPECIFICALLY IDENTIFY DEDUCTIONS TO BE MADE,
STATING ONLY THAT DEDUCTIONS REQUIRED BY PHIL LAW WOULD BE
MADE AND TURNED OVER THE THE BASE COMMANDER. IT SHOULD BE
NOTED THAT UNDER LOCAL LAW THESE SIX DEDUCTIONS ARE ALL
MANDATORY. ARTICLE II OF THE CURRENT BLA REQUIRES DUES

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NSAE-00 PER-01 MMO-01 EB-07 L-03 PRS-01 /056 W
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FM AMEMBASSY MANILA
TO SECSTATE WASHDC 7283
INFO SECDEF WASHDC
JCS WASHDC
CINCPAC HONOLULU
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C O N F I D E N T I A L SECTION 3 OF 3 MANILA 10062

CINCPAC ALSO FOR POLAD

FROM USDEL 108

CHECKOFF. WE DO NOT NOW DEDUCT AGENCY FEES. (THESE ARE FEES PAID TO THE UNION BY NON-MEMBERS EMPLOYED IN UNITS OF WHICH THAT UNION IS THE EXCLUSIVE COLLECTIVE BARGAINING AGENT, WHO ACCEPT THE BENEFITS ATTAINED BY COLLECTIVE BARGAINING.) ASSESSMENT OF AGENCY FEES IS REQUIRED BY PHIL LAW--LOCAL CUSTOMS AND PRACTICE--WE EXPECT SERIOUS DIFFICULTY IN CONTINUING TO OPPOSE AGENCY FEES CHECKOFF AND WE BELIEVE A U.S. CONCESSION ON THIS POINT AT THE PROPER TIME WOULD BE OF GREAT VALUE TO THE PHIL SIDE. PAYMENTS FOR SOCIAL SECURITY ARE NOW BEING DEDUCTED; SALARY LOAN PAYMENTS FOR HOUSING, EDUCATION, AND OTHER PURPOSES ARE NOW BEING DEDUCTED WHEN THE EMPLOYEE REQUESTS IT, WHICH IS EVERY TIME AN EMPLOYEE GETS SUCH A LOAN, BECAUSE PHIL GOV'T AGENCY WILL NOT MAKE THE LOAN UNLESS THE EMPLOYER AGREES TO DEDUCT THE PAYMENTS. WE DO NOT NOW DEDUCT PHIL INCOME TAX. WE DO NOT DEDUCT EMPLOYEE COMPENSATION, OR MEDICARE, BUT SEE NO SERIOUS OBJECTION
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IF THE EMPLOYEES ARE COVERED BY THESE BENEFITS, BUT THIS NEEDS FURTHER NEGOTIATION. WITH REGARD TO EMPLOYEE COMPENSATION, OUR APPROPRIATED FUNDS EMPLOYEES ARE COVERED AT PRESENT BY US LAWS ADMINISTERED BY OUR DEPARTMENT OF LABOR, AND WE FEEL THAT DUAL COVERAGE BY BOTH PHIL AND U.S. SYSTEMS IS UNREASONABLE. WITH REGARD TO MEDICARE, ARTICLE XII OF THE CBA REQUIRES THAT WE PROVIDE GROUP HOSPITALIZATION INSURANCE FREE OF CHARGE TO DIRECT-HIRE EMPLOYEES; ONLY THE EMPLOYEE NOT HIS FAMILY--IS COVERED, SO THERE IS A GAP THAT PHIL MEDICARE MAY FILL.

4. WE SEE THE FOLLOWING AREAS AS LIKELY TO PRESENT SPECIAL DIFFICULTIES:

A. DEMAND THAT PHIL LABOR AND SOCIAL LAWS, RULES AND REGULATIONS GOVERN EMPLOYEE-EMPLOYER RELATIONS IN THE FACILITIES; WE HOPE TO SATISFY THIS DEMAND IN THE GENERAL ARTICLE ON RESPECT FOR PHILIPPINE LAWS.

B. BINDING ARBITRATION OF DISPUTES.

C. COLLECTIVE BARGAINING FOR COMPENSATION AND ASSOCIATED BENEFITS.

D. FILIPINO APPROVAL OF CONTRACTS INVOLVING RELEASE
OF DIRECT-HIRE EMPLOYEES.

5. PHIL STATEMENTS AS LATE AS JANUARY 1976 REFLECTED POSI-
TION THAT BLA WITH MINOR MODIFICATIOOOONS WAS SATISFACTORY.
IN NIEW OF REVISED HARD-LINE STAND THAT SUBSTANTION REVI-
SION OR TOTAL REPLACEMENT IS REQUIRED, ON-SITE
ASSISTANCE OF DOD MEMBER KNOWLEDGEABLE AND AUTHORIZED TO
GIVE SOME ON-SITE GUIDANCE IS DESIRABLE.

6. ACTION REQUESTED: (1) WASHINGTON CLEARANCE FOR APPROACH
OUTLINED ABOVE; (2) WASHINGTON COMMENT ON TEXT OF EXPLORA-
TORY DRAFT ITEMS QUOTED IN PARA 3; (3) ASSISTANCE OF MR.
W.A. PANKONIN OF CINCPAC J1 IN VIEW OF HIS PERSONAL
KNOWLEDGE OF LOCAL CONDITIONS AND COST-EFFECTIVENESS OF
TRAVEL ARRANGEMENTS.
SULLIVAN
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